

UNITED STATES DISTRICT COURT

**FOR THE DISTRICT OF ARIZONA**

BEFORE: THE HONORABLE RANER C. COLLINS, JUDGE

**REPORTER'S EXCERPTED TRANSCRIPT OF PROCEEDINGS**

JURY TRIAL  
DAY 11

**(TESTIMONY OF AO)**

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Proceedings Reported by Stenographic Court Reporter  
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CR-15-1723-TUC-RCC - April 5, 2018 -

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2 **A P P E A R A N C E S**

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I N D E X

<u>DEFENSE WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
AO				
By Mr. Chapman	5			
By Mr. Kleindienst		13		
Discussion Held at Sidebar		11		

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1 (The following excerpt is the testimony of AO.)

2 MR. CHAPMAN: Your Honor, at this time the defense  
3 would call a witness who we will identify by the letters A  
4 and O.

5 THE COURT: All right.

13:47:23

6 THE CLERK: Raise your right hand, please.

7 THE COURT: Right.

8 THE CLERK: Your other hand.

9 (AO, DEFENSE WITNESS, SWORN.)

13:48:23

10 THE CLERK: Thank you. Please be seated.

11 MR. CHAPMAN: May I approach the witness?

12 THE COURT: And please speak directly into the  
13 microphone.

14 THE WITNESS: All right.

13:48:41

15 THE COURT: You shouldn't have to hold it.

16 THE WITNESS: Okay.

17 MR. CHAPMAN: May I approach the witness?

18 THE COURT: You may.

19 THE WITNESS: All right.

20 Thank you.

13:49:14

21 THE COURT: The headset is not actually fitting very  
22 well.

23 THE INTERPRETER: We're going to try a different one,  
24 Your Honor.

25 THE WITNESS: Thank you.

13:49:31

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AO - Direct Examination

1 THE COURT: You may proceed.

2 DIRECT EXAMINATION

3 BY MR. CHAPMAN:

4 Q. Good afternoon, ma'am.

5 Can you hear me? 13:50:08

6 A. Good afternoon.

7 Yes.

8 Q. Have you ever testified in a courtroom before?

9 A. Never.

10 Q. All right. I understand that it can be a little 13:50:16  
11 nerve-racking, so I want you to just take a deep breath and  
12 answer these questions as best you can. Okay?

13 A. Okay.

14 Q. How old are you, ma'am?

15 A. I'm 60. 13:50:34

16 Q. All right. And also, if you need to take a drink of water,  
17 you can.

18 If you need me to rephrase a question I will do that.  
19 Okay?

20 A. Okay. 13:50:53

21 Q. Do you live -- well, let me ask you a question.

22 Where do you live, which city?

23 A. In Nogales, Arizona.

24 Q. And what street do you live on in Nogales?

25 A. On International Street. 13:51:13

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AO - Direct Examination

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1 Q. Do you live west of the Port of Entry on International  
2 Street?

3 A. I live towards the center, right -- like in downtown.

4 Q. Okay. Do you know where the DeConcini Port of Entry is?

5 A. Yes, yes.

13:51:40

6 Q. Do you live near there?

7 A. Yes, yes.

8 Q. Roughly how far away from the port do you live?

9 A. About four blocks.

13:51:59

10 Q. And if you were facing Mexico and looking at the DeConcini  
11 Port of Entry, would your house be to the right of the port or  
12 to the left of the port?

13 A. To the left.

14 Q. Okay. Let me ask it this way --

15 Well, I'll move on. I'll get back to that in a little  
16 bit.

17 Do you live in a house?

18 A. Yes, it's an apartment. A house, it's a house.

19 Q. Okay. How far away from West International is it?

20 A. It's a small space that's left, it's short.

13:52:46

21 Q. Okay. Is it -- is there a dirt driveway from West  
22 International to your house?

23 A. Yes, at the entrance.

24 Q. And is there another small house next to your house?

25 A. Yes.

13:53:18

**AO - Direct Examination**

1 Q. Okay. And if I were to walk down that dirt driveway  
2 towards your house, would your house be the one on the right or  
3 the one on the left?

4 A. The one on the right.

5 Q. Okay. So do you have a bedroom window in your house? 13:53:37

6 A. (In English:) Yes.

7 Q. In the bedroom that you sleep in?

8 A. (In English:) Yes.

9 Q. And does it face the border?

10 A. Yes, it faces it. 13:54:00

11 Q. Can you see the border fence from your bedroom?

12 A. (In English:) Yes.

13 Q. Do you have a porch light?

14 A. (In English:) Yes.

15 Q. Is it usually on? 13:54:17

16 A. (In English:) Yes.

17 Q. Does your neighbor have a porch light?

18 A. No, no.

19 Q. Does she have any -- he or she have any kind of lighting on  
20 the outside of the house? 13:54:35

21 A. No.

22 Q. Do you recall telling Agent Arrasmith on December 7th,  
23 2016, that your neighbor had a porch light and it was always  
24 on?

25 A. It's rarely that she turns it on because she is very 13:55:05

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AO - Direct Examination

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1 careful with her money. She is by herself.

2 Q. Okay. By the way, do you live by yourself or with someone  
3 else?

4 A. With my husband and one of my children.

5 Q. How old is your husband?

13:55:30

6 A. He's already 90. And what I do is I take care of him.

7 Q. How many bedrooms are there in your house?

8 A. Three.

9 Q. Do you know how many square feet it is?

10 A. I don't know, I couldn't tell you.

13:55:58

11 Q. That's fine.

12 Do you wear glasses?

13 A. Yes.

14 Q. Is that for close-up reading or for looking far away?

15 A. For far away.

13:56:15

16 Q. Do you know -- or did you know an individual by the name of  
17 Jose Antonio Elena Rodriguez?

18 A. No, no, I never met him.

19 Q. Do you remember telling -- strike that.

20 Didn't you tell Agent Arrasmith on December 7th, 2016,

13:56:41

21 that your grand -- your grandson went to school with him in

22 Mexico?

23 A. I don't remember having said that. I'm surprised that you  
24 have that information, because I don't know why, because he  
25 attends school in Mexico, he doesn't attend school in the

13:57:18

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AO - Direct Examination

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1 United States.

2 Q. Do you also -- didn't you also tell Special Agent Stacey  
3 Gutierrez with the FBI on October 19th, 2012, that your  
4 grandson, who was 17 at the time, once knew and was friends  
5 with Jose Antonio Elena Rodriguez?

13:57:48

6 A. Never, I never gave that information. That's a lie. It's  
7 a lie.

8 Q. All right. I want to draw your attention to October 10th,  
9 2012, and that evening. Do you understand?

13:58:32

10 A. (In English:) Yes.

11 Q. You were aware that there was a shooting event that night  
12 near your house where someone was killed; correct?

13 A. Well, the whole city knew about it because it was being  
14 broadcast over the radio.

13:58:57

15 Q. Isn't it true that you told Agent Arrasmith on December  
16 7th, 2016, that you saw Jose Antonio Elena Rodriguez run by  
17 your house southbound towards the international border fence?

18 A. No. No, I never said that.

19 Q. And then sometime later you told agent -- well, strike  
20 that.

13:59:37

21 Didn't you also tell Agent Arrasmith at that time that  
22 you later saw two Border Patrol agents by your house? Do you  
23 remember saying that?

24 A. Well, that is true, because a lot of people go by my house,  
25 especially undocumented people. And that evening -- I usually

14:00:21

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AO - Direct Examination

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1 release my dogs at night, so my dogs were very nervous because  
2 he was going through there, and there was another person with  
3 him as well.

4 Q. Who was going through there?

5 A. I don't know, I think it's the person that they killed, you 14:00:36  
6 know, I don't know, I never met him.

7 Q. You also told Agent Arrasmith on December 7th, 2016, that  
8 your assumption, from what you saw -- first Elena Rodriguez  
9 running towards the fence, and then later seeing two Border  
10 Patrol agents going in the same direction -- was that they were 14:01:15  
11 chasing him.

12 A. No, that's incorrect. He was never being chased. There  
13 weren't any agents there on my lot or in the back either.

14 Q. And when you were asked about the lighting around your  
15 house by Agent Arrasmith, you stated that your porch light and 14:01:48  
16 your neighbor's light across the drive are always on.

17 A. Well, mine is always on, but my neighbor, she is very  
18 careful with her budgeting, so she never turns it on.

19 Q. You also told Agent Arrasmith that the agents ran the same  
20 path as Jose Antonio Elena Rodriguez, and then the agents 14:02:20  
21 turned left on International Street. True?

22 A. Well, I'm surprised that you say that, because that's not  
23 true, because no agent ever showed up at any moment.

24 Q. Then you told Agent Arrasmith that you went to bed and  
25 later heard shots being fired. 14:02:48

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AO - Direct Examination

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1 MR. KLEINDIENST: I would just -- he can ask her the  
2 question, and then --

3 THE WITNESS: No.

4 MR. KLEINDIENST: -- impeach her.

5 THE WITNESS: Never.

14:02:56

6 MR. KLEINDIENST: But he can't just read from the  
7 interview. I would object to the way he's asking the  
8 questions.

9 THE COURT: Objection is overruled.

10 BY MR. CHAPMAN:

14:03:04

11 Q. So let me ask that again because I didn't hear your  
12 response.

13 Did you tell Agent Arrasmith that after you saw  
14 Rodriguez run down your driveway you went to bed and then heard  
15 shots being fired?

14:03:20

16 A. No. Well, that person did enter. But at the same time  
17 that they entered, they exited towards the south, towards the  
18 dividing line. But there were never agents there, never.

19 MR. CHAPMAN: Your Honor, may I approach for a moment?

20 THE COURT: Yes.

14:03:59

21 (At sidebar on the record.)

22 MR. CHAPMAN: Here's my predicament: She's denying  
23 everything because she's scared. And she's been interviewed by  
24 Arrasmith, our investigator, and she's always said that this  
25 was a narco family, that he was involved in narcotics

14:04:29

**AO - Direct Examination**

1 activities, that her family dissociated with him and his family  
2 when he was young when he got involved.

3 And here we have this woman, you saw her driveway at  
4 the jury view, I mean, she lives 150 feet from where all this  
5 stuff happens. And she's scared to death.

14:04:50

6 And I think I should be allowed to explain to the jury  
7 and explore with her the fact that she's scared of this  
8 narcotics activity, and she believes that the victim was part  
9 of the activity, and that's why she's basically perjuring  
10 herself over and over again.

14:05:14

11 THE COURT: I'll let you ask her if she's afraid.  
12 She can say yes or no. And you can just have either  
13 Agent Arrasmith or Downer say what --

14 MR. KLEINDIENST: She said.

15 THE COURT: Yeah. You can do it that way.

14:05:27

16 MR. CHAPMAN: But it still doesn't explain why she's  
17 afraid.

18 THE COURT: I don't think the jury has to be explained  
19 why she's afraid. I think they got -- they're pretty good.

20 MR. CHAPMAN: Okay.

14:05:36

21 THE COURT: They got good instincts.

22 (End of discussion at sidebar.)

23 BY MR. CHAPMAN:

24 Q. Miss AO --

25 A. Yes.

14:06:01

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AO - Cross-Examination

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1 Q. -- are you afraid?

2 A. Of what?

3 Q. Are you fearful right now as you're testifying?

4 A. Well, no.

5 MR. CHAPMAN: May I have just a moment? 14:06:19

6 THE COURT: Sure.

7 (Discussion off the record between defense counsel.)

8 MR. CHAPMAN: No further questions.

9 THE WITNESS: Okay.

10 CROSS-EXAMINATION

14:06:43

11 BY MR. KLEINDIENST:

12 Q. Good afternoon, ma'am.

13 A. Good afternoon.

14 Q. Do you remember the shooting that took place on Calle  
15 Internacional about five years ago? 14:07:00

16 A. I don't remember.

17 Q. You don't remember that?

18 A. No, no.

19 Q. Do you remember a shooting took place, and the doctor who  
20 lives on Calle Internacional's house was hit with bullets? 14:07:14

21 A. Yes, I do. I remember now.

22 Q. Now, do you remember about a week after that an FBI agent,  
23 a young lady by the name of Miss Gutierrez, came to your house  
24 to talk to you?

25 A. Yes, I do remember. 14:07:43

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AO - Cross-Examination

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1 Q. A nice lady, and identified herself as being an FBI agent?

2 A. She never identified herself.

3 Q. Did you know that she worked for the Government though and  
4 was investigating what happened on Calle Internacional?

5 A. No, no.

14:08:03

6 Q. Do you remember her talking to you about what you remember  
7 that night?

8 A. Yes, but I didn't identify her as a Government agent.

14:08:03

9 Q. Okay. But do you remember the lady coming to your house  
10 and talking to you?

14:08:24

11 A. Yes.

12 Q. And do you remember that she asked you if you knew anything  
13 about what happened the night of the shooting?

14 A. Well, I think so, I remember.

15 Q. And you didn't tell her that you knew anything, did you?

14:08:43

16 A. No, not to her, I didn't make any comments to her.

17 Q. You didn't know anything about the shooting, did you?

18 A. No.

19 Q. Now, you live on the American side, but do you ever listen  
20 to Nogales radio from Nogales, Sonora?

14:09:06

21 A. Yes. I like to listen to that radio because they  
22 give -- they broadcast the latest news. And at that time they  
23 were still talking about the person that passed, so they were  
24 talking about that news.

25 Q. So that was on the news for more than one day, what had

14:09:36

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AO - Cross-Examination

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1 happened with the boy that passed; right?

2 A. They were broadcasting since the night, because they woke  
3 me up when I was sleeping. And a lot of people heard it, not  
4 just me.

5 Q. What woke you up when you were sleeping? The news reports  
6 or the shooting? 14:10:00

7 A. Well, both things.

8 Q. So you were asleep and you were awoken by the radio that  
9 came on?

10 A. I was awakened by the noise from the people -- by some  
11 people who were walking on my lot. They were making a lot of  
12 noise and they had long guns, and the dogs were barking and  
13 barking because they were also nervous. 14:10:17

14 Q. They had long guns?

15 A. Yes. 14:10:51

16 Q. And how long -- did they wake you up when they walked down  
17 your street with the long guns?

18 A. Yes, they woke me up.

19 Q. Now, you didn't say that to the lady who came to talk to  
20 you, right, about a week after this, did you? 14:11:07

21 A. No, I didn't tell her, no.

22 Q. And would it be true, ma'am, that any facts that you know  
23 about what happened on Calle Internacional came from listening  
24 to the radio in Nogales, Sonora?

25 A. It's because -- it's because XENY, she gives the news at 14:11:25

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AO - Cross-Examination

---

1 the time that they're happening. So what I was listening to is  
2 what had -- just had happened in my back yard.

3 Q. And you listened to the news on the days afterwards and  
4 they talked about the shooting on the news thereafter; correct?

5 A. They talked about the same thing for a while because, you  
6 know, it was a very outstanding incident, surprising incident.

14:12:08

7 MR. KLEINDIENST: Okay. Thank you very much, ma'am.

8 THE WITNESS: You're welcome.

9 MR. CHAPMAN: I have no further questions, Your Honor.

14:12:35

10 THE COURT: Jurors have any questions, please place  
11 them in writing.

12 It appears there are none.

13 Thank you, ma'am. You may step down.

14 THE WITNESS: You're welcome.

15 (Further proceedings held on the record not included in  
16 this transcript.)

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C E R T I F I C A T E

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6 I, CANDY L. POTTER, do hereby certify that I am duly  
7 appointed and qualified to act as Official Court Reporter for  
8 the United States District Court for the District of Arizona.

9 I FURTHER CERTIFY that the foregoing pages constitute  
10 a full, true, and accurate transcript of all of that portion of  
11 the proceedings contained herein, had in the above-entitled  
12 cause on the date specified therein, and that said transcript  
13 was prepared under my direction and control.

14 DATED at Phoenix, Arizona, this 4th day of June,  
15 2018.

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s/Candy L. Potter  
Candy L. Potter, RMR, CRR

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